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IN THE

Supreme Court of The United States

THOMAS OLIVA

and

LOUIS J. DE MAIO

Petitioners

v.

STATE OF MARYLAND

On Petition For Writ Of Certiorari
To The U.S. Court Of Appeals
For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Louis J. De Maio, Esq.
Counsel of Record
P. O. Box 347
Bel Air, Md. 21014
(410) 838-2404

QUESTIONS PRESENTED FOR REVIEW

1). Whether a federal district judge exceeded his authority when he granted sovereign immunity to the State of Maryland under the 11th Amendment of the U.S Constitution without the service of process or requiring the State of Maryland to respond to the Complaint ?

2). Whether a federal district judge committed reversible error in granting sovereign immunity to the State of Maryland who had previously waived its sovereign immunity by accepting federal funding for its judicial system ?

PARTIES TO THE PROCEEDINGS

Petitioners:

Thomas Oliva

Louis J. De Maio

Respondent:

State of Maryland

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JURISDICTION

On November 20, 2003 The U.S. Court of Appeals for the Fourth Circuit, without a hearing, affirmed the decision of the Federal District Court of Maryland at Baltimore CA-03-1976-JFM. The jurisdiction of this Court is authorized under 28 U.S.C. 1254 (1).

STATEMENT OF FACTS

On July 3,2003,the Petitioners filed a Complaint in the Federal District Court of Maryland at Baltimore against the State of Maryland under the jurisdiction of 18 U.S.C. 1961 et seg. Racketeer Influenced and Corrupt Organizations.

The Court, without serving a copy of the Complaint upon the Defendant, granted sovereign immunity to the State of Maryland. The Court without a hearing, dismiss the Petitioners Compliant with prejudice. The Petitioners filed a timely appeal to the Fourth U.S. Court of Appeals. On November 20, 2003 the U.S. Court of Appeals for the Fourth Circuit, without a hearing, affirmed the decision of the Federal District Court in an unpublished opinion. From the Appellate Courts decision, the Petitioners petition for review by writ of certiorari.

ARGUMENT

I. JUDGE MOTZ EXCEED HIS AUTHORITY WHEN HE REFUSE TO SERVE THE COMPLAINT ON THE STATE OF MARYLAND AND GRANTED THE STATE SOVEREIGN IMMUNITY ON HIS OWN COGNIZANCE.

When suit was filed in Federal District Court in Maryland an original and two copies of the Complaint were filed with the Court. Judge J. Frederick Motz refuse to serve a copy on the State of Maryland. This conduct resulted in the State of Maryland not having to respond to the Complaint.

Although the doctrine of sovereign immunity has to be pleaded affirmatively, Judge Motz, on his own cognizance, granted the State of Maryland sovereign immunity under the 11th Amendment to the U. S. Constitution. There is nothing in the record that indicates the State of Maryland intended to invoke the defense of sovereign immunity. By Judge Motz granting sovereign immunity based on facts not in the record is reversible error. The conduct of Judge Motz is partial to the State of Maryland, prejudicial to the Petitioners in representing the State of Maryland as opposed to being a judge and the decider of the facts and the law.

II. THE STATE OF MARYLAND ACCEPTED FEDERAL FUNDING IN THEIR JUDICIAL SYSTEM HAVE WAIVED THEIR RIGHT TO PLEAD SOVEREIGN IMMUNITY.

If Judge Motz had served the Complaint on the State of Maryland, the State of Maryland could not plead sovereign immunity since the state has received federal funding and in essence, has waived its right to sovereign immunity. Edelman v. Jordan 415 u.S. 61,671-678, Maryland Port Adm. v. S.S. American Legend 453 F. Supp. 584, 590.

Judge Motz improperly and prematurely committed reversible error in granting the State of Maryland sovereign immunity after the State of Maryland waived its right to immunity. Judge Motz has no authority to grant the State of Maryland sovereign immunity after the State of Maryland has waived immunity. Judge Motz entered a defense plea for the State of Maryland which the State of Maryland could not do on their own behalf had they been served a copy of the Complaint. The conduct of Judge Motz both individually and collectively is a denial of due process and equal protection under the 14 Amendment to the U.S. Constitution caused strictly by Judge Motz engaging in a mission of his own and not administering the law in a fair and impartial manner.

The U.S. Court of Appeals for the Fourth Circuit sustained the decision of Judge Motz in an insufficient and a decision that is devoid on any legal rationale as to why the doctrine sovereign immunity should apply to the State of Maryland after the State waived its right to sovereign immunity. The Court of Appeals should have reversed the decision of Judge Motz.

Additionally, the Court should have granted Summary Judgment to the Petitioners since there is sufficient evidence in the record and there is no dispute by the State of Maryland

as to any material fact and the Petitioners are entitled to Summary Judgment as a matter of law. Rule 56

CONCLUSION

For the reasons stated, the writ of certiorari should be granted.

Respectfully submitted,

Louis J. De Maio, Esq.

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(410) 838-2404
Attorney for Petitioners

APPENDIX

APP.1

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-1976

THOMAS OLIVA; LOUIS J. DE MAIO,

Plaintiffs - Appellants,

versus

STATE OF MARYLAND,

Defendant-Appellee.

Appeal from the United States District Court for the District of Maryland,. at Baltimore. J. Frederick Motz, District Judge. (CA-03-l936-JFM)

Submitted: Nov. 6, 2003 Decided: Nov. 20, 2003

Before WIDENER, MICHAEL, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Thomas Oliva, Louis J. De Maio, Appellants Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36 (c)

PER CURIAM:

Thomas Oliva and Louis J. De Maio appeal the district court's order dismissing their complaint alleging civil violations of the Racketeer Influenced and Corrupt Organizations Act under 18 U.S.C. § 1961 (2000), et seq. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. See Oliva v. Maryland, No. CA-03-1936-JFM (D. Md. July 10, 2003). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX

APP.2

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

THOMAS OLIVA
LOUIS J. DE MAIO
Appellants

RE: 03-1976

v.

STATE OF MARYLAND
J. Joseph Curran, Jr.
Attorney General
Appellee

APPELLANT'S BRIEF

The Appellants filed suit on July 3, 2003 by the attorney of record, Louis J. De Maio, Esq. against the Appellee under the jurisdiction of 18 U.S.C. 1961 et seq. Racketeer Influences and Corrupt Organization Act, hereinafter referred to as RICO .

Judge Motz, on his own cognizance, without a hearing or a response or Motion by the Appellee granted the Appellee sovereign immunity, refuse to grant the Appellant's Motion for Summary Judgment and dismiss the case with prejudice. From Judge Motz's decision comes this timely appeal filed on July 31, 2003.

RESTATEMENT OF THE FACTS

Judge Motz's decision contains several inaccuracies and omissions as follows:

1. The initial lawsuit filed in the Circuit Court for Harford County, MD. was filed on November 21, 2000. It was not filed in the year 2002. See Complaint and Exhibit 1 and 2.

2. The initial state lawsuit was filed against ITT Hartford, spelled with a "T", not ITT Harford. ITT Hartford is a foreign insurance company authorized to do business in the State of Maryland through its Resident Agent, The Corporate Trust, Inc. ITT Hartford has its home office in Hartford Connecticut. See Complaint and Exhibit 1 & 2.

3. The Certification of Service to the Harford County Circuit Court was never incorporated into the record. See Exhibit 1 & 2.

4. The Resident Agent, The Corporate Trust, Inc. forfeited its resident agency on November 22, 2000, one day after service of the Complaint and subsequently had no standing in court or authorized to file any documents in the Circuit Court for Harford County. The filing of documents under the circumstances constitutes the unauthorized practice of law. The Circuit Court for Harford County refuse to Strike these improper documents from the record and relied upon the same to deny the Plaintiff a Motion for Summary Judgment. ITT Hartford never enter their appearance and never responded to the Complaint. Under Maryland law and the Maryland Rules of Procedure, the Plaintiff is entitled to Summary Judgment as a matter of law.

5. The Chief Judge of the Court of Special Appeals, Joseph Murphy, Jr., on his own cognizance issued a Show Cause Order why the appeal should not be dismissed after the date had been set for the filing of briefs and tentative dates for hearing. See Exhibit 4, 5 and 6.

6. A claim was filed against the State of Maryland in the

amount that would have been allowed had the Circuit Court granted the Summary Judgment. See Exhibit 8. Judge Motz incorrectly asserted a lawsuit had been filed against the State of Maryland under the Maryland Tort Claim Act, Md. Code Ann. 12-202 (a). This is grossly incorrect.

In conclusion, the facts contained in the Complaint and all the Exhibits support the premise that the Appellee was engaged in racketeering activities, refuse to administer Maryland law and procedure and protected the insurance industry through the Maryland judicial system. Additionally, the inaccuracies by Judge Motz, with no evidence in the record, appears to support the premise that Judge Motz was engaged in an Ex Parte proceeding.

ISSUE I:

DID THE FEDERAL DISTRICT JUDGE EXCEED HIS AUTHORITY IN GRANTING THE STATE OF MARYLAND SOVEREIGN IMMUNITY AFTER THE STATE OF MARYLAND NEVER INVOKED IMMUNITY ?

The following are definitions from the RICO act.

(2) "State" means any state of the Unites States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency or instrumentality there of;

(4) "Enterprise" includes any individual, partnership association, or other legal entity and any union or group of individuals associated in fact although not a legal entity;

(5) "Pattern of Racketeering Activity" requires at least two acts of racketeering activity one of which occurred after the effective date of this chapter and the last of which occurred within ten years after the commission of a prior act of racketeering activity.

The RICO act, by definition, stipulates what organization are under the act, how these organizations violate the

law with racketeering activities and the period these organizations are bound under the law.

Civil actions for damages under the RICO act are permitted for injuries sustained by reason of racketeering activity. 70 ALR Fed. 538.

The entire Maryland judiciary engaged in racketeering activity when it knowingly refuse to implement Maryland law and the Maryland Rules of Procedure in protecting the unregulated insurance industry to the detriment of the Appellants. See Complaint and attached Exhibits.

Judge Motz's ruling that the RICO act does not apply to the State of Maryland is without merit, inconsistent with existing law and constitutes reversible error.

Judge Motz also committed reversible error and exceeded his authority when he granted the State of Maryland sovereign immunity.

The State of Maryland is a legal entity that can sue and be sued in any court of competent jurisdiction The state litigation began in November 2000, and remain active until the denial of petition on Feb. 12, 2003 Exhibit 14. The State of Maryland never invoked sovereign immunity. Having never invoked the concept of sovereign immunity, its deemed to have been waived. It is questionable even if the doctrine applies. More importantly, Judge Motz cannot invoke any immunity on behalf of the State of Maryland and provided no legal basis for doing so. It appears that Judge Motz has posture himself in defending the State of Maryland in lieu of deciding the case, in an impartial manner, based on the facts and the law. If the doctrine of sovereign does apply, there is no legal authority for a federal judge to invoke the concept after it had been waived by the State of Maryland.

The U.S. Constitution was intended to protect those citizens from those in authority who abuse their power. One of the scriveners of the U.S. Constitution, namely, Benjamin

Franklin, stated more eloquently and very apropos to this case:

"Whereas, whenever Kings instead of protecting the lives and property of their subjects, as is their bounden duty, do endeavor to perpetuate the destruction of either, they thereby cease to be Kings, become tyrants, and dissolve all ties of allegiance between themselves and their people"

Substituting "The State of Maryland" for "Kings", the Appellee must be held accountable for their racketeering activity under the RICO act. The Appellee never invoke sovereign immunity.

Additionally, the Eleventh Amendment to the U.S. Constitution may be waived by the State of Maryland by accepting federal funds. Edelman v. Jordan 415 U.S. 651,671-678, Maryland Port Adm. v. S.S. American Legend 453 F. Supp. 584, 590. See attached Exhibit B.

Judge Motz committed reversible error in granting the State of Maryland sovereign immunity on his own cognizance after immunity had been waived by the State of Maryland and secondly, when the State of Maryland received federal funds.

ISSUE II

DID THE DISTRICT COURT ERR IN NOT GRANTING THE APPELLANTS SUMMARY JUDGEMENT ?

The attorney of record made a Motion for Summary Judgment under Rule 56 of the Federal Rules of Procedure. Exhibit 15.

Since there is no response by the Appellee, no dispute, on the record, to any material fact concerning the Complaint and the 14 incorporated Exhibits, the Appellants are entitled to Summary Judgment as a matter of law. Judge Motz

committed reversible error in not granting Summary Judgment. Allegation are taken as true and correct when made under oath and viewed in light most favorable to the pleader especially when not rebutted by the Appellee. A. S. Abell Co. v Chell 412 F(2) 712 (4th Circuit).

WHEREFORE, the Appellants pray this Honorable Court reverse the decision of Judge Motz, remand the case to the federal District Court and mandate the Court to grant Summary Judgment in favor of the Appellants.

Respectfully submitted,
s/Louis J. De Maio, Esq.
Attorney for the Appellants
P. O. Box 347
Bel Air, Md. 21014
(410) 838-2404

CERTIFICATION OF SERVICE

I certify on this 5th day of September, 2003 a copy of the Appellants Brief was sent by first class mail, postage prepaid to:

State of Maryland
J. Joseph Curran, Jr.
Attorney General - State of Md.
200 St. Paul Place
Baltimore, Md. 21201

s/Louis J. De Maio, Esq.

EXHIBIT B

ESTIMATED REVENUES FOR THE FISCAL YEAR ENDING JUNE 30, 2003

	GENERAL FUNDS	SPECIAL FUNDS	FEDERAL FUNDS	TOTAL FUNDS
INSURANCE COMPANY TAXES, LICENSES, AND FEES	198,771,897			198,77
HORSE RACING TAXES AND LICENSES		4,368,500		4,36
DISTRICT COURT FEES AND COSTS	72,059,000			72,05
INTEREST ON INVESTMENTS	70,259,000	5,000,000		75,25
HOSPITAL PATIENT RECOVERIES:				
STATE HOSPITAL RECOVERIES - MEDICAID	43,057,000			43,05
STATE HOSPITAL RECOVERIES - MEDICARE	3,182,000			3,18
STATE HOSPITAL RECOVERIES - INSURANCE & SPONSORS	7,429,000			7,42
DISPROPORTIONATE SHARE PAYMENTS	10,239,000			10,23
MISCELLANEOUS TAXES, FEES AND OTHER REVENUES				
EXCESS FEES OF OFFICE	10,998,025			10,99
UNCLAIMED PROPERTY REVENUE	57,000,000			57,00
LOCAL SHARE OF COST OF INCOME TAX ADMINISTRATION	11,800,000			11,80
UNINSURED MOTORIST PENALTY FEES	12,800,000			12,80
MISCELLANEOUS	9,285,936			9,28
ANNUITY BOND FUND MISCELLANEOUS REVENUES		28,159,636		28,15
BUDGETED TOBACCO SETTLEMENT RECOVERIES		151,100,708		151,10
RETIREMENT CONTRIBUTION REIMBURSEMENT		33,315,971		33,31
LEGISLATIVE	227,770			22
JUDICIAL REVIEW AND LEGAL				
JUDICIARY				
COURT OF APPEALS	116,000			11
COURT OF SPECIAL APPEALS	105,000			10
ADMINISTRATIVE OFFICE OF THE COURTS	758,000	10,378,494		11,13
STATE LAW LIBRARY		11,500		11
CLERKS OF THE CIRCUIT COURT	38,619,000		1,865,028	40,48

APPENDIX

APP.3

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2003 JUL 10 P 4:06
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AT BALTIMORE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

THOMAS OLIVA
LOUIS J. DE MAIO
Plaintiffs

CIVIL ACTION
NO. JFM-03-1936

v.

STATE OF MARYLAND
Defendant

ORDER

In accordance with the foregoing Memorandum,
IT IS this 1st day of July , 2003, by this Court hereby ORDERED that:

1. Plaintiffs' Complaint IS DISMISSED WITH PREJUDICE, without requiring service of process on Defendant;

2. The Clerk of the Court CLOSE this case; and

3. The Clerk of the Court MAIL a copy of this Order, together with the foregoing Memorandum, to the Plaintiffs.

s/ J. Frederick Motz
United States District Judge

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2003 JUL 10 P 4:06
CLERK'S OFFICE
AT BALTIMORE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

THOMAS OLIVA
LOUIS J. DE MAIO
Plaintiffs

CIVIL ACTION
NO. JFM-03-1936

v.

STATE OF MARYLAND
Defendant

MEMORANDUM

The instant complaint was filed on July 3, 2003 by Thomas Oliva and Louis J. DeMaio,[1] *pro se*. Plaintiffs allege that jurisdiction of this Court is proper under 18 U.S.C. §1961, *et seq*, Racketeer Influenced and Corrupt Organizations Act ("RICO"). (Paper No. 1).

Plaintiffs state that on or about November 17, 2002 Louis J. De Maio, on behalf of Thomas Oliva, instituted a civil suit in the Circuit Court for Harford County against ITT Harford. Subsequently, Plaintiffs executed service of process, via certified mail, on ITT Harford's resident agent. The resident agent served with the Complaint filed documents with the state court indicating that it could not process the Complaint received as it has numerous clients whose name began "ITT Harford." ITT Harford having failed to respond to the Complaint, Plaintiffs moved for summary judgment.[2] Plaintiffs motion was denied due to lack of proper service on the Defendant. Dissatisfied with this ruling, Plaintiffs appealed to the Maryland Court of Special Appeals.

After noting the appeal and issuing a scheduling order, the Maryland Court of Special Appeals directed Plaintiffs to

show cause why the appeal should not be dismissed, as not being an appeal of a final appealable order. Plaintiffs responded and subsequently the appeal was dismissed.[3]

Again dissatisfied with the state court's ruling, Plaintiffs filed a claim against the State of Maryland. Plaintiffs also filed "a charge of impropriety" with the Maryland Attorney General's Office complaining of the proceedings in the Circuit Court for Harford County and Maryland Court of Special Appeals. The Maryland Attorney General declined to take any action as to Plaintiffs' Complaint.

Thereafter Plaintiffs filed, in the Maryland Court of Appeals, Petitions to Remove Court of Special Appeals Chief Judge Joseph Murphy, Jr., Clerk of the Court Leslie Gradet, Circuit Court for Harford County Chief Judge William O. Carr, and Circuit Court for Harford County Associate Judge Thomas E. Marshall. The Petitions were denied.

Plaintiffs have now instituted this suit pursuant to 18 U.S.C. §1964.

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[1] Mr. DeMaio is a member of the Maryland bar.

[2] Plaintiffs also moved to have the documents filed by the resident agent struck, and requested a hearing.

[3] Plaintiffs note several irregularities in the appellate proceedings. Among other things, they note that the show cause order was issued without the signature of the judge appearing on Plaintiff's copy; a hearing on the appeal was scheduled and then rescinded; the Clerk of the Court and Chief Judge of the Court of Special Appeals refused to provide Plaintiffs with date stamped copies of documents filed and refused to provide Plaintiffs with a copy of the show cause order bearing the judge's signature. Plaintiffs allege that since the office of the chief judge of the Court of Special Appeals is located in Baltimore County and the record of appeal was located in Annapolis, that "It is apparent that Chief Judge Joseph Murphy became personally involved in the case, he deviated from having the case proceed through normal procedure and had to be involved in ex parte proceedings with the unregulated insurance industry for certainly he when [sic] out of his way to protect the insurance company and do so by deviating from the Maryland procedure of review." (Paper No. 1, p. 5).

The Eleventh Amendment bars federal courts from hearing actions by private parties against a state and its agencies. *See Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996) Eleventh Amendment immunity is subject to two exceptions: congressional abrogation and state waiver. *See College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 670 (1999). Accordingly, unless the State of Maryland has consented to suit or Congress has expressly abrogated Eleventh Amendment immunity in 18 U.S.C. § 1961, this action is barred as against the State of Maryland. While the State of Maryland has waived its sovereign immunity for certain types of cases brought in State courts, see Md. State Gov't Code Ann., § 12-202(a), it has not waived its immunity under the Eleventh Amendment to suit in federal court. To abrogate the Eleventh Amendment, Congress must make its intention to do so "unmistakably clear in the language of the statute." *Kimel*, 528 U.S. at 73. Congress has not done so in RICO. *Bair v. Krug*, 853 F.2d 672, 674-75 (9th Cir.1988)(no abrogation of sovereign immunity intended in civil RICO statute); *Gaines v. Texas Tech University*, 965 F.Supp. 886 (N.D.Tx.1997) (citing *Bair*, 853 F.2d at 674-675); *Molina v. New York*, 956 F.Supp. 257, 260 (E.D.N.Y.1995) (dicta); *McMaster v. Minnesota*, 819 F.Supp. 1429, 1434 (D.Minn.1993), *aff'd* 30 F.3d 976 (8th Cir.1994)). Because Maryland has not waived its sovereign immunity and Congress expressed no intention of disturbing the states' sovereign immunity in enacting the RICO statute, this suit is barred by the Eleventh Amendment as against the State of Maryland.

Accordingly, a separate Order shall be entered dismissing the instant complaint, without requiring service of process upon and an answer from the named Defendant.

July 10, 2003
Date

s/ J. Frederick Motz
United States District Judge